

CITATION: *Cold Storage and Ice-Making Award - State 2003*
Reprint of Award - 1 March 2011
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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 698 - reprint of award

COLD STORAGE AND ICE-MAKING AWARD - STATE 2003

Following the Declaration of the General Ruling for Overtime Meal Allowance (matter numbers B/2010/34 and B/2010/38), the Cold Storage and Ice-Making Award - State 2003 is hereby reprinted, pursuant to s. 698 of the *Industrial Relations Act 1999*.

I hereby certify that the Award contained herein is a true and correct copy of the Cold Storage and Ice-Making Award - State 2003 as at 1 January 2011.

Dated 1 March 2011.

[L.S.] G.D. Savill
Industrial Registrar

COLD STORAGE AND ICE-MAKING AWARD - STATE 2003

PART 1 - APPLICATION AND OPERATION

1.1 Title

This Award is known as the Cold Storage and Ice-Making Award - State 2003.

1.2 Arrangement

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1.3 Date of operation

This Award takes effect from 17 February 2003.

1.4 Coverage

1.4.1 This Award has application throughout the State of Queensland and except as hereinafter provided shall apply to all employers engaged in the callings of Cold Storage and/or Ice-Making and to their employees engaged on any operation in or in connection with or incidental to such callings.

1.4.2 This Award does not apply to P and O Australia Ltd. or its employees engaged in the operations of Riverside Cold Stores at Hamilton and Food City Cold Stores at Murarrie.

1.4.3 As to the employers named in the Schedule to this Award the provisions of the Award are modified in accordance with the requirements of the individual Orders listed in such Schedule.

1.5 Definitions

1.5.1 The "Act" means the *Industrial Relations Act 1999* as amended or replaced from time to time.

1.5.2 "Chiller" means a chamber for the storage and preservation of foodstuffs the temperature of which is reduced by artificial means to not less than minus 1.1 degrees Celsius.

1.5.3 "Commission" means the Queensland Industrial Relations Commission.

1.5.4 "Freezer" means a chamber for the storage and preservation of foodstuffs, the temperature of which is reduced by artificial means to less than minus 1.1 degrees Celsius.

1.5.5 "F.C.L Container" means full container load.

1.5.6 "Mutually Agreed" means agreed in writing between the employer and the secretary of the Union.

1.5.7 "Union" means The Australian Workers' Union of Employees, Queensland.

1.6 Area of operation

For the purposes of this Award the Divisions and Districts are as follows:

1.6.1 Divisions

Northern Division - That portion of the state along or north of a line commencing at the junction of the sea-coast with the 21st parallel of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude; then by that parallel of longitude due south to 22 degrees 30 minutes of south latitude; then by that parallel of latitude due west to the western border of the State.

Mackay Division - That portion of the State within the following boundaries: Commencing at the junction of the sea-coast with the 21st parallel of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude; then by that parallel of longitude due south to 22 degrees of south latitude; then by that parallel of latitude due east to the sea coast; then by the sea-coast northerly to the point of commencement.

Southern Division - That portion of the State not included in the Northern or Mackay Divisions.

1.6.2 Districts

(a) Northern Division:

Eastern District - That portion of the Northern Division along or east of 144 degrees 30 minutes of east longitude.

Western District - The remainder of the Northern Division.

(b) Southern Division:

Eastern District - That portion of the Southern Division along or east of a line commencing at the junction of the southern border of the State with 150 degrees of east longitude; then by that parallel of longitude due north to 25 degrees of south latitude; then by that parallel of latitude due west to 147 degrees of east longitude; then by that parallel of longitude due north to the southern boundary of the Mackay Division.

1.7 Parties bound

This Award is legally binding upon the employees as prescribed by clause 1.4 and their employers, and the Union and its members.

PART 2 - FLEXIBILITY

2.1 Enterprise flexibility

2.1.1 As part of a process of improvement in productivity and efficiency, discussion should take place at each enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction and to encourage consultative mechanisms across the workplace.

- 2.1.2 The consultative processes established in an enterprise in accordance with clause 2.1 may provide an appropriate mechanism for consideration of matters relevant to clause 2.1.1. Union delegates at the place of work may be involved in such discussions.
- 2.1.3 Any proposed genuine agreement reached between an employer and employee/s in an enterprise is contingent upon the agreement being submitted to the Commission in accordance with Chapter 6 of the Act and is to have no force or effect until approval is given.

2.2 Majority clause

- 2.2.1 This Award applies in a limited way if employees covered by it are a minority of employees in an individual enterprise.
- 2.2.2 Employees covered by this Award are a minority of employees in an individual enterprise if:
- (a) their employer's main business or undertaking is other than *[insert description of minority work]*; and
 - (b) the majority of their employer's employees are covered by an award made, or an agreement approved, by the Australian Industrial Relations Commission or a State arbitrator.
- 2.2.3 If employees covered by this Award are a minority of employees, then:
- (a) the award or agreement that applies to the majority of their employer's employees applies to them as a result of clause 2.2 to the extent that the award deals with allowable award matters and provisions incidental to such matters and necessary for the effective operation of the award; and
 - (b) the following provisions of this Award will continue to apply to them and will override any conflicting-provisions in the award or agreement that apply to the majority of the employer's employees.

PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

3.1 Consultative mechanisms and procedures in the workplace

- 3.1.1 The development of effective ongoing participation/consultative practices is important in the process of award restructuring and can lead to advantages for both the employer and employees. It is therefore desirable that participative/consultative mechanisms, established at local level be continued.
- (a) Consultative mechanisms/practices shall be implemented where agreement exists between employers and employees;
 - (b) The form, structure and method of implementing consultative mechanism/practices shall be as determined at the local level through negotiations between the employer, employees and the Union consistent with agreed consultative models, provided however that the Union shall be represented in the consultative process by a duly elected job representative.
 - (c) The Union agrees that at the local level where agreed consultative mechanisms/practices are in place to allow through the consultative process the application of designated Award conditions in a more flexible manner, the Union shall be party to any agreement where the employees genuinely agree.
 - (d) The process of consultative practices is a mechanism through which employers can be involved in and positively contribute towards managements' decision making process. All decisions are encouraged to be reached through consultative mechanisms/practices, however, managerial prerogative is acknowledged.

3.2 Grievance and dispute settling procedure

The matters to be dealt with in this procedure shall include all grievances or disputes between an employee and an employer in respect to any industrial matter and all other matters that the parties agree on and are specified herein. Such procedures shall apply to a single employee or to any number of employees.

- 3.2.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee/s may bypass this level in the procedure.
- 3.2.2 If the grievance or dispute is not resolved under clause 3.2.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.

- 3.2.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.2.5.
- 3.2.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.2.2, the matter shall, in the case of a member of a Union, be reported to the relevant officer of that Union and the senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.2.2 will not result in resolution of the dispute.
- 3.2.5 If, after discussion between the parties, or their nominees mentioned in clause 3.2.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.
- 3.2.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 3.2.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 3.2.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 3.2.9 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.
- 3.2.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

PART 4 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

4.1 Employment categories

- 4.1.1 Employees, other than casuals, covered by this Award shall be advised in writing of their employment category upon appointment.

Employment categories are:

- (a) full-time;
- (b) part-time (as prescribed in clause 4.3); or
- (c) casual (as prescribed in clause 4.4).

4.2 Flexibility of work

Employees within each classification are to perform a wider range of duties including work which is incidental or peripheral to their main tasks or functions.

4.3 Part-time employment

- 4.3.1 An employer may employ part-time employees in any classification in this Award.

- 4.3.2 A part-time employee is an employee who:

- (a) is employed for not less than 7.6 hours per day and for less than 40 ordinary hours per week; and
- (b) has reasonably predictable hours of work; and
- (c) receives, on a proportionate basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

- 4.3.3 At the time of engagement, the employer and the employee will agree in writing on the number of ordinary hours to be worked per week.
- 4.3.4 The agreed number of ordinary hours per week may only be varied by mutual agreement. Any such agreed variation to the number of weekly hours of work will be recorded in writing.
- 4.3.5 Any variation to the work pattern will be in accordance with methods of altering the ordinary hours of work for full-time employees as detailed in Part 6 of this Award, unless otherwise Mutually Agreed.
- 4.3.6 An employer is required to roster a part-time employee for a minimum of 4 consecutive hours on any shift.
- 4.3.7 Overtime provisions shall be in accordance with clause 6.3 (Overtime).
- 4.3.8 A part-time employee employed under the provisions of clause 4.3 must be paid for ordinary hours worked at the rate of 1/40th of the weekly rate prescribed for the class of work performed.
- 4.3.9 Where a public holiday falls on a day upon which an employee is normally engaged, that employee shall be paid the appropriate rate for the number of hours normally worked on that day.
- 4.3.10 Where an employee and their employer agree in writing, part-time employment may be converted to full-time, and *vice-versa*, on a permanent basis or for a specified period of time. If such an employee transfers from full-time to part-time (or *vice-versa*), all accrued Award and legislative entitlements shall be maintained. Following transfer to part-time employment accrual will occur in accordance with the provisions relevant to part-time employment.
- 4.3.11 All other provisions of this Award relevant to full-time employees shall apply to part-time employees.

4.4 Casual employment

- 4.4.1 "Casual employee" means an employee engaged as such on an hourly basis.
- 4.4.2 The hourly rate for casuals shall be arrived at by dividing the prescribed weekly rate for the class of work performed by 40 and adding 23%:

Provided that casual workers who attend for work at the appointed time shall be provided with a minimum of 4 hours' work or paid as for 4 hours' work.

- 4.4.3 Casual employees by mutual agreement may be paid in accordance with clause 5.4.1 or may be paid in cash at the termination of each engagement.

4.5 Trainees

Trainees are engaged under this Award, except as varied from time to time by the Order for *Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities)*.

4.6 Two or more classes of work

An employee who is required to perform work on any day for which a higher rate of pay is prescribed in clause 5.2 shall be paid as follows:

- (a) If more than 4 hours on any day the higher rate for the whole of such day.
- (b) If 4 hour or less then payment of the higher rate for 4 hours.

4.7 Anti-discrimination

- 4.7.1 It is the intention of the parties to this Award to prevent and eliminate discrimination, as defined by the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* as amended from time to time, which includes:

- (a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of any of the above attributes;
- (b) sexual harassment; and
- (c) racial and religious vilification.

- 4.7.2 Accordingly, in fulfilling their obligations under the grievance and dispute settling procedure in clause 3.2, the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.
- 4.7.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 4.7.4 Nothing in clause 4.7 is to be taken to affect:

- (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991*;
- (b) an employee, employer or registered organisation pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission/Anti-Discrimination Commission Queensland.

4.8 Termination of employment

4.8.1 Statement of employment

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

4.8.2 Termination by employer

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

| Period of Continuous Service | Period of Notice |
|---|------------------|
| Not more than 1 year | 1 week |
| More than 1 year but not more than 3 years | 2 weeks |
| More than 3 years but not more than 5 years | 3 weeks |
| More than 5 years | 4 weeks |

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice.
- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:
- Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:
- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
- (iii) any other amounts payable under the employee's employment contract.
- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

4.8.3 Notice of termination by employee

The notice of termination required to be given by an employee shall be two days. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.8.2(d) for a maximum period of one week.

4.8.4 Time off during notice period

During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

4.9 Introduction of changes

4.9.1 Employer's duty to notify

- (a) Where an employer decides to introduce changes in production, program, organisation, structure or technology, that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and, where relevant, their Union or Unions.
- (b) 'Significant effects' includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs:

Provided that where the Award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

4.9.2 Employer's duty to consult over change

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.9.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.10 Redundancy

4.10.1 Consultation before terminations

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, the employer shall consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.10.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out:

Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.

4.10.2 Transfer to lower paid duties

- (a) Where an employee is transferred to lower paid duties for reasons set out in clause 4.10.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.8.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:

- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
- (iii) any other amounts payable under the employee's employment contract.

4.10.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
 - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (b) In clause 4.10.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) of any such business and 'transmission' includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and 'transmitted' has a corresponding meaning.

4.10.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.10.1, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

4.10.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.10.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

4.10.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.8.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.10.1(a), shall be entitled to the following amounts of severance pay:

| Period of Continuous Service | Severance Pay (weeks' pay) |
|---|-------------------------------|
| Less than 1 year | nil |
| 1 year but not more than 2 years | 4 |
| More than 2 years but not more than 3 years | 6 |
| More than 3 years but not more than 4 years | 7 |
| More than 4 years but not more than 5 years | 8 |
| More than 5 years but not more than 6 years | 9 |
| More than 6 years but not more than 7 years | 10 |
| More than 7 years but not more than 8 years | 11 |
| More than 8 years but not more than 9 years | 12 |
| More than 9 years but not more than 10 years | 13 |
| More than 10 years but not more than 11 years | 14 |
| More than 11 years but not more than 12 years | 15 |
| More than 12 years | 16 |

- (b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

4.10.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

4.10.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.10.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee remained with the employer until the expiry of such notice:

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

4.10.9 *Alternative employment*

An employer, in a particular case, may make application to the Commission to have the general severance pay prescription amended if the employer obtains acceptable alternative employment for an employee.

4.10.10 *Employees with less than one year's service*

Clause 4.10 shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

4.10.11 *Employees exempted*

Clause 4.10 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

4.10.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.10 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.
- (b) A 'company' shall be defined as:
 - (i) a company and the entities it controls; or
 - (ii) a company and its related company or related companies; or
 - (iii) a company where the company or companies has a common Director or common Directors or a common shareholder or common shareholders with another company or companies.

4.10.13 *Exemption where transmission of business*

- (a) The provisions of clause 4.10.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:
 - (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
 - (ii) where the employee rejects an offer of employment with the transmittee:

- (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmitter; and
- (B) which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee.

(b) The Commission may amend clause 4.10.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

4.10.14 *Incapacity to pay*

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay.

4.11 Continuity of service - transfer of calling

In cases where a transfer of calling occurs, continuity of service should be determined in accordance with sections 67-71 of the Act, as amended from time to time.

PART 5 - WAGES AND WAGE RELATED MATTERS

5.1 Definitions of classifications

5.1.1 *Cold Storage and Ice Making employee Grade 1 (82%)*

A new employee to the industry in the first 3 months in the capacity of a trainee. Such employee to undergo induction and training and perform duties as directed.

Employees at this level perform routine duties essentially of a manual nature. In accord with their experience and level of training, they:

- (a) perform general labouring and cleaning duties;
- (b) exercise minimal judgement;
- (c) work under direct supervision;
- (d) undertake structured on-the-job training so as to enable them to progress to Grade 2.

5.1.2 *Cold Storage and Ice Making employee Grade 2 (87.4%)*

(a) Points of entry - An employee at this level performs work above and beyond the skills of an employee at Cold Storage employee - Grade 1 to the level of their training for this level including certification where relevant.

(b) Skills:

- (i) Responsible for the quality of their own work subject to detailed direction.
- (ii) Works in a team environment and/or under routine supervision.
- (ii) Undertakes duties in a safe and responsible manner.
- (iv) Exercises discretion within their level of skills and training.
- (v) Possesses basic interpersonal communication skills.
- (vi) Competent in operating non-licensed material handling equipment.

(c) Indicative duties of such classification may include the following:

- (i) Operation of non-licensed material handling equipment.
- (ii) Physical movement of product, such as handling and stacking cartons and bodies of meat.
- (iii) Cleaning.
- (iv) General labouring duties.

- (v) Duties incidental or peripheral to the above.

5.1.3 *Cold Storage and Ice Making employee Grade 3 (90%)*

- (a) Points of entry - An employee at this level performs work above and beyond the skills of an employee at Cold Storage employee - Grade 2 to the level of their training for this level including certification where relevant.
- (b) Skills:
 - (i) Able to understand detailed instructions and work from procedure.
 - (ii) Works in a team environment and/or under routine supervision.
 - (iii) Responsible for quality of their own work.
 - (iv) Possesses sound interpersonal and communication skills.
 - (v) Competent in operation of licensed equipment.
- (c) Indicative duties of such classification may include the following:
 - (i) Assembling/palletising cartons on pallets for orders and moving stock.
 - (ii) Operations of licensed and non-licensed materials handling equipment.
 - (iii) Duties incidental or peripheral to the above.

5.1.4 *Cold Storage and Ice Making employee Grade 4 (92.4%)*

- (a) Points of entry - An employee at this level performs work above and beyond the skills of an employee at Cold Storage employee - Grade 3 to the level of their training for this level including certification where relevant.
- (b) Skills:
 - (i) Able to understand detailed instructions and work from procedure.
 - (ii) Able to co-ordinate work in a team environment under limited supervision.
 - (iii) Responsible for quality of their own work.
 - (iv) Possesses sound interpersonal and communication skills.
 - (v) Must be competent to perform one or more of the following tasks/duties or a combination of both.
- (c) Indicative duties of such classification may in addition to those of classification Grade 3 include the following:
 - (i) Identifying and selecting product for order picking.
 - (ii) Checking use by dates.
 - (iii) Maintain Records.
 - (iv) Liaison with stock controller.
 - (v) Processing damaged stock.
 - (vi) Checking stock inwards and outwards against documents.
 - (vii) Contact with clients.
 - (viii) Duties incidental or peripheral to the above.
 - (ix) Operate VDU for information, input and retrieval of information.

5.1.5 *Cold Storage and Ice Making employee Grade 5 (96%)*

- (a) Points of entry - An employee at this level performs work above and beyond the skills of an employee at Cold Storage employee - Grade 4 to the level of their training for this level including certification where relevant.
- (b) Skills:
 - (i) Understands and is responsible for quality control standards.
 - (ii) Possesses an advanced level of interpersonal and communication skills.
 - (iii) Competent keyboard skills.
 - (iv) Sound working knowledge of all warehousing/stores duties performed at levels below this grade, exercises discretion within scope of this grade.
 - (v) May perform work requiring minimal supervision either individually or in a team environment.
 - (vi) Operation of VDU for purposes in addition to information retrieval and input.
- (c) Indicative duties of such classification, in addition to those of grade 4, may include:
 - (i) Operation of equipment requiring special licence.
 - (ii) Liaison with clients, suppliers, senior supervisors and engineers.
 - (iii) Organisation of orders.
 - (iv) Responsible for documentation including documents relating to the export of product.

5.1.6 *Cold Storage and Ice Making employee Grade 6 (100%)*

- (a) Points of entry - An employee at this level performs work above and beyond the skills of an employee at Cold Storage employee - Grade 5 to the level of their training for this level including certification where relevant.
- (b) Skills:
 - (i) Implements quality control techniques and procedures.
 - (ii) Understands and is responsible for a warehouse or a large section of a warehouse.
 - (iii) Highly developed level of interpersonal and communication skills.
 - (iv) Ability to supervise and provide direction and guidance to other employees including the ability to assist in the provision of on-the-job training and induction.
 - (v) Exercises discretion within the scope of this grade.
 - (vi) Exercises skills attained through the successful completion of an appropriate warehousing certificate.
- (c) Indicative duties of such classification, in addition to those of Grade 5, may include:
 - (i) Ordering goods and services.
 - (ii) Organising the service and repair of equipment.
 - (iii) Liaison with clients and supplier on sensitive matters.
 - (iv) Organisation of work.
 - (v) Authorisation of overtime and payment cards.
 - (vi) Counselling workers with respect to duties and workers performance.

5.2 **Wages and extra payments**

5.2.1 The minimum weekly wage rates payable to the following classes of employees shall be as follows:

| | | Award Rate Per Week \$ |
|---------|------|------------------------------|
| Grade 1 | 82 | 604.90 |
| Grade 2 | 87.4 | 627.40 |
| Grade 3 | 90 | 638.80 |
| Grade 4 | 92.4 | 648.30 |
| Grade 5 | 96 | 663.30 |
| Grade 6 | 100 | 682.00 |

Note 1: The percentage relativities column relates to percentages applying before the application of the first, second and third \$8.00 per week arbitrated Safety Net Adjustments made in accordance with the February and November 1994 Review of Wage Fixing Principles. The percentage relativities column should also be applied by excluding amounts shown in the "Excess Payment" column in any calculations of relativities.

Note 2: Grade 3 includes an excess payment of \$0.50.

Note 3: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2010 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments..

5.2.2 *Divisional and district allowances*

In addition to the wage rates provided in clause 5.2.1 employees shall be paid the following allowances:

| | |
|--------------------------------------|------|
| Mackay Division | 0.90 |
| Northern Division - Eastern District | 1.05 |
| Western District | 3.25 |
| South Western District | 1.05 |

5.3 Allowances

5.3.1 *General disability allowance*

- (a) Employees covered by this Award shall be paid a general disabilities allowance at the rate as listed in clause 5.3.2.
- (b) The allowance shall be treated as part of the ordinary wage for all purposes of the Award except overtime.
- (c) The allowance shall be deemed to be paid in settlement of any claims in the following respects:
 - (i) work in low temperatures;
 - (ii) provision of clothing (other than protective clothing as specified in clause 10.1);
 - (iii) packing and unpacking of containers;
 - (iv) washing time and walking time.

5.3.2 *Disability allowance*

| | Per Week \$ |
|--|----------------|
| Employees in Chiller | 20.40 |
| Employees in Freezer for less than 4 hours per day | 21.90 |

Employees in Freezer for more than 4 hours per day 30.40

5.3.3 *Employees in charge*

- (a) Employees appointed to be leading hands in charge of other employees or charge hands shall be paid the following amounts in addition to the prescribed weekly wage:

| | Per week |
|-------------------|----------|
| | \$ |
| Less than 5 | 25.90 |
| 5 to 10 employees | 34.20 |
| More than 10 | 51.40 |

- (b) This additional payment shall be regarded as part of the wage of the employee concerned and shall be taken into consideration in the computation of overtime, payment for annual leave, sick leave, public holidays, week-end work, etc.:

Provided that the additional allowance shall not be taken into consideration for the computation of overtime when the employee is not carrying out the function of an employee in charge.

5.3.4 *Employees operating forklifts*

Employees operating forklifts shall be paid 71.3c per hour in addition to their ordinary rates.

The allowance for operating a forklift is not to be taken into consideration in the computation of overtime.

- 5.3.5 Where physically packing and/or unpacking and checking of F.C.L. Containers is performed at a cold store the following additional allowances shall be paid to employees whilst so engaged at any time, packing or unpacking export or import containers only:

- (a) Packing and/or unpacking - \$3.75 per container.
(b) Checking - \$8.19 per container.

5.4 **Payment of wages**

- 5.4.1 Payment of wages shall be made weekly and at the discretion of the employer by one of the following means:

- (a) Cash;
(b) Cheque; or
(c) Payment directly into an employee's nominated bank account, credit union or building society account, without costs to the employee.

- 5.4.2 Such payment shall be available on the same day of each week which shall be no later than 2 days after the completion of the pay week:

Provided that when a holiday occurs on any nominated pay day, wages shall be transferred so as to be available on the first preceding ordinary working day.

5.5 **Superannuation**

- 5.5.1 *Application* - In addition to the rates of pay prescribed in clause 5.2, eligible employees (as defined in clause 5.5.3(b)) shall be entitled to occupational superannuation benefits, subject to the provisions of clause 5.5.

5.5.2 *Contributions*

- (a) Amount - As from 1 January 2005 every employer shall contribute on behalf of each eligible employee an amount calculated at 9% of the employee's ordinary time earnings, into an approved fund, as defined in this clause. Each such payment of contributions shall be rounded off to the nearest ten (10) cents:

Provided that where an employee is absent and is receiving by way of workers' compensation an amount of money no less than the award rate of pay the contribution shall be calculated at 3%.

- (b) Regular payment - The employer shall pay such contributions to the credit of each eligible employee at least once each calendar month or in accordance with the requirements of the approved fund trust deed.

- (c) Minimum level of earnings - As from 1 January 2005 no employer shall be required to pay superannuation contributions on behalf of any eligible employee in respect of any month during which the employee's ordinary time earnings, as defined, is less than \$450.00.
- (d) Absences from work - Contributions shall continue to be paid on behalf of an eligible employee during any absence on paid leave such as annual leave, long service leave, public holidays, sick leave and bereavement leave, but no employer shall be required to pay superannuation contributions on behalf of any eligible employee during any unpaid absences except in the case of absence on workers' compensation.
- (e) Other contributions - Nothing in clause 5.5 shall preclude an employee from making contributions to a fund in accordance with the provisions of the trust deed of the fund.
- (f) Cessation of contributions - An employer shall not be required to make any further contributions on behalf of an eligible employee for any period after the end of the ordinary working day upon which the contract of employment ceases to exist.
- (g) No other deductions - No additional amounts shall be paid by the employer for the establishment, administration, management or any other charges in connection with the fund other than the remission of contributions as prescribed in clause 5.5.

5.5.3 Definitions

- (a) "Approved fund" means a fund (as defined in clause 5.5.3(c)) approved for the purposes of clause 5.5 by the Commission as one to which occupational superannuation contributions may be made by an employer on behalf of an employee, as required by clause 5.5. Such approved fund may be individually named or may be identified by naming a particular class or category.
- (b) "Eligible employee" means any employee who has been employed by the employer during 5 consecutive weeks and who has worked a minimum of 50 hours during that period. After completion of the above qualifying period, superannuation contributions shall then be made in accordance with clause 5.5.2 effective from the commencement of that qualifying period.
- (c) "Fund" means a superannuation fund satisfying the Commonwealth legislation for occupational superannuation funds and satisfying the superannuation fund conditions in relation to a year of income, as specified in the relevant Act and complying with the operating standards as prescribed by Regulations made under the relevant Act. In the case of a newly established fund, the term shall include a superannuation fund that has received a notice of preliminary listing from the Insurance and Superannuation Commissioner.
- (d) "Ordinary time earnings" for the purposes of clause 5.5 means the actual ordinary time rate of pay the employee receives for ordinary hours of work including shift loading and leading hand, in-charge or supervisory allowances where applicable. The term includes any overaward payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime, disability allowances, commission, bonuses, lump sum payments made as a consequence of the termination of employment, annual leave loading, penalty rates for public holiday work, fares and travelling time allowances or any other extraneous payments of a like nature.

5.5.4 For the purposes of this Award, an approved fund means -

- (a) Sunsuper; or The John Pinnell Cold Stores Pty. Ltd. Superannuation Fund; or Burleigh Marr Distribution Pty. Ltd. Plan No. 90391.
- (b) Any named fund as is agreed to between the relevant employer/Union parties to this Award and as recorded in an approved Industrial Agreement.
- (c) In the case of a minority group of employees of a particular employer, any industry, multi-industry or other fund which has been approved in an award or an agreement approved by an Industrial Tribunal whether State or Federal jurisdiction which has already had practical application to the majority of award employees of that employer.
- (d) As to employees who belong to the religious fellowship known as the Brethren, who hold a Certificate issued pursuant to section 115 of the Act and are employed by an employer who also belongs to that fellowship, any fund nominated by the employer and approved by the Brethren.
- (e) Any fund agreed between an employer and an employee who holds a Certificate issued pursuant to section 115 of the Act where membership of a fund cited in an award would be in conflict with the conscientious beliefs of that employee in terms of section 115 of the Act.

- (f) In relation to any particular employer, any other established fund to which that employer was already actually making regular and genuine contributions in accordance with clause 5.5.2 on behalf of at least a significant number of that employer's employees covered by this Award as at 29 September 1989 and continues to make such contribution.

5.5.5 *Challenge of a fund*

- (a) An eligible employee being a member or a potential member of a fund, as well as the Union, may by notification of a dispute to the Commission challenge a fund on the grounds that it does not meet the requirements of clause 5.5.
- (b) Notwithstanding that the Commission determines that a particular fund does not meet the requirements of clause 5.5, the Commission may in its discretion and subject to any recommendation, direction or order it may make, recognise any or all of the contributions previously made to that fund as having met the requirements or part thereof of clause 5.5.2 up to and including the date of that determination.
- (c) In the event of any dispute over whether any fund complies with the requirements of clause 5.5, the onus of proof shall rest upon the employer.

5.5.6 *Fund selection*

- (a) No employer shall be required to make or be prevented from making, at any one time, contributions into more than one approved fund. Such fund, other than a fund referred to in clauses 5.5.4(c), (d), (e), and (f) shall be determined by a majority decision of employees.
- (b) Employees who are members of an established fund covered by clause 5.5.4(f) shall have the right by majority decision to choose to have the contributions specified in clause 5.5.2 paid into a fund as provided for elsewhere in clause 5.5.4 in lieu of the established fund to which clause 5.5.4(f) has application.
- (c) The initial selection of a fund recognised in clause 5.5.4 shall not preclude a subsequent decision by the majority of employees in favour of another fund recognised under that clause where the long term performance of the fund is clearly disappointing.
- (d) Where clause 5.5.6 has been utilised and as a result another approved fund is determined, access to a further re-appraisal of the fund for the purpose of favouring yet another fund shall not be available until a period of 3 years has elapsed after that utilisation.
- (e) The employer and employee may agree to have the employee's superannuation contributions made to an approved superannuation fund, other than those specified in this Award.
 - (i) Any such agreement must be recorded in writing and signed by the employer and employee and kept on the employee's file.
 - (ii) A person must not coerce someone else to make an agreement.
 - (iii) Such agreement, where made, will continue until such time as the employer and employee agree otherwise, and shall be made available to relevant persons for the purposes of sections 371 and 373 (inspection of time and wage records) of the Act.
 - (iv) Any dispute arising out of this process will be handled in accordance with the grievance and dispute settling procedure as contained in clause 3.2.

5.5.7 *Enrolment*

- (a) Each employer to whom clause 5.5 applies shall as soon as practicable as to both current and future eligible employees:
 - (i) Notify each employee of the employee's entitlement to occupational superannuation;
 - (ii) Consult as may be necessary to facilitate the selection by employees of an appropriate fund within the meaning of clause 5.5.4;
 - (iii) Take all reasonable steps to ensure that upon the determination of an appropriate fund, each eligible employee receives, completes, signs and returns the necessary application form/s provided by the employer, to enable that employee to become a member of the fund; and
 - (iv) Submit completed application form/s and any other relevant material to the trustees of the fund.

- (b) Each employee upon becoming eligible to become a member of a fund determined in accordance with clause 5.5 shall:
- (i) complete and sign the necessary application form/s to enable that employee to become a member of that fund; and
 - (ii) return such form/s to the employer within 28 days of receipt of the application form/s in order to be entitled to the benefit of the contributions prescribed in clause 5.5.2.
- (c) Where an employer has complied with the requirements of clause 5.5.7(a) and an eligible employee fails to complete, sign and return the application form/s within 28 days of the receipt by the employee of that form/s, then that employer shall:
- (i) Advise the eligible employee in writing of the non-receipt of the application form/s and further advise the eligible employee that continuing failure to complete, sign and return such form/s within 14 days could jeopardise the employee's entitlement to the occupational superannuation benefit prescribed by clause 5.5.
 - (ii) In the event that the eligible employee fails to complete, sign and return such application form/s within the specified period of 14 days be under no obligation to make any occupational superannuation contributions in respect of such eligible employee excepting as from any subsequent date from which the completed and signed application form/s is received by the employer.
 - (iii) In the event that the eligible employee fails to return a completed and signed application form/s within a period of 6 months from the date of the original request by the employer, again advise that eligible employee in writing of the entitlement and that the receipt by the employer of a completed and signed application form/s is a pre-requisite to the payment of any occupational superannuation contributions.
 - (iv) At the same time as advising the eligible employee pursuant to clause 5.5.7(c)(iii) submit both to the Chief Industrial Inspector, Brisbane and to the Union a copy of each letter forwarded by the employer to the eligible employee pursuant to clauses 5.5.7(c)(i) and 5.5.7(c)(iii).
- (d) Where an employer fails to provide an eligible employee with an application form/s in accordance with clause 5.5.7(a)(iii) the employer shall be obliged to make contributions as from the date the employee became an eligible employee provided that the eligible employee completes, signs and returns to the employer an application form/s within 28 days of being provided with the application form/s by the employer. Where the eligible employee fails to complete, sign and return an application form/s within such period of 28 days the provisions of clause 5.5.7(c) shall apply.

5.5.8 *Unpaid contributions*

Subject to Chapter 11, Part 2, Division 5 of the Act and to clause 5.5.5, where the discretion of the Commission has been exercised, should it be established that the employer has failed to comply with the requirements of clause 5.5.2 in respect of any eligible employee such employer shall be liable to make the appropriate contributions retrospectively to the date of eligibility of the employee, plus an amount equivalent to the rate of return those contributions would have attracted in the relevant approved fund, or as necessary a fund to be determined by the Commission under clause 5.5.5, had they been paid on the due dates.

The making of such contributions satisfies the requirements of clause 5.5 excepting that resort to clause 5.5.8 shall not limit any common law action which may be available in relation to death, disablement or any similar cover existing within the terms of a relevant fund.

5.5.9 *Exemptions*

- (a) An employer may apply to the Commission for exemption from all or any of the provisions of clause 5.5 in the following circumstances:
- (i) Incapacity to pay the costs associated with its implementation; or
 - (ii) Any special or compelling circumstances peculiar to the business of the employer.

PART 6 - HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEKEND WORK

6.1 Hours of work

6.1.1 *Day worker*

The ordinary hours of day workers (other than those referred to in clause 6.1.2) shall not exceed 8 hours per day or 40 hours per week. Such ordinary hours shall be worked consecutively, except for meal breaks and smokos, between 6.30 a.m. and 4.30 p.m., or as Mutually Agreed, Monday to Friday both inclusive. The ordinary starting and ceasing times once fixed between these hours shall not be altered except by the giving by the employer to employees concerned of 2 days' notice of such alteration.

6.1.2 *Employees received produce from boning room in any cold stores where boning rooms are located*

The ordinary working hours of employees so engaged shall be worked between the hours 6.30 a.m. to 4.30 p.m. Monday to Friday continuously with a minimum meal break of 30 minutes, to coincide with the operations of such boning room of any cold store. These hours may be altered to coincide with any change of hours of work in the said boning room.

6.2 Meal times and rest pauses

6.2.1 *Meal breaks*

Employees shall be given a meal break of not less than half an hour or more than one hour, to be commenced not earlier than 3 1/2 hours or later than 5 1/2 hours after the commencement of their daily work.

6.2.2 *Meal allowance*

Employees required to continue working for more than one hour after their ordinary ceasing time shall be provided by the employer with a reasonable meal or paid a meal allowance of \$12.10.

If the overtime continues for a further 4 hours beyond the first hour worked a further meal shall be provided or meal allowance paid after each additional 4 hours worked.

Employees required to work overtime for more than 4 hours continuously on a Saturday, Sunday or public holiday shall at the expiration of each 4 hourly period be provided by the employer with a reasonable meal or paid a meal allowance of \$12.10.

6.2.3 *Rest pauses*

Every employee subject to this Award, shall be entitled to a rest pause of not less than 10 minutes' duration in the first and second half of the daily work, to be taken in the employer's time. Such rest pauses shall be taken at such times as will not interfere with continuity of work where continuity is necessary:

Provided further that employees who are working in a chamber where the temperature is less than minus 1.1 degrees Celsius shall be allowed a rest period of 10 minutes after each hour worked in addition to the recognised smoko; but such extra rest periods may be so arranged that sufficient employees remain in the department to carry on the work. Provided further it is agreed that rest pauses will not be eliminated but where "Mutually Agreed" periods of work may be re-arranged and/or combined so that there is less disruption to certain work by moving the rest pauses.

6.2.4 *Crib breaks and overtime*

Employees required to continue working for more than one hour after their ordinary ceasing time shall be allowed a break of one-half hour for a meal after the first hour worked and a further break of 45 minutes after each subsequent 4 hours' overtime worked, for which no deduction of pay shall be made:

Provided that if an employee is required to work overtime in excess of 4 hours before the ordinary starting time on an ordinary working day or on a Saturday or Sunday or public holiday, the employee shall be allowed a break of half an hour for a meal in the employer's time after the expiration of the first 4 hours and subsequent 4 hours worked.

6.3 Overtime

6.3.1 All time worked by any employee before the fixed starting time or after the fixed ceasing time or in excess of 8 hours per day or 40 hours per week shall be deemed overtime.

6.3.2 Except as hereinafter provided all overtime worked by employees shall be paid for at the rate of time and a-half for the first 3 hours and double time thereafter on any one day, each day to stand alone when overtime is being computed:

Provided however that:

(a) All time worked on Sundays shall be paid for at the rate of double time and a-half.

(b) All overtime worked between midnight and 6.30 a.m. shall be paid for at the rate of double time except where agreements exist which give an earlier ordinary starting time, in which case the rate of double time shall only apply to overtime between midnight and the earlier agreed starting time.

6.3.3 All time worked by casuals in excess of 8 hours per day or outside the daily spread of 6.30 a.m. to 4.30 p.m. Monday to Friday shall be deemed to be overtime and attract the same penalty provisions as provided in clause 6.3.2.

6.4 Minimum payments for overtime work

6.4.1 Employees recalled to work on week-days after ordinary ceasing time shall be provided with a minimum of 2 hours' work or paid for a minimum of 2 hours at overtime rates.

6.4.2 Employees required to work overtime on Saturdays, Sundays and holidays shall be provided with a minimum of 4 hours' work or paid for a minimum of 4 hours at overtime rates.

6.4.3 Employees required to continue work after the ordinary ceasing time without a meal break shall be provided with a minimum payment of a half hour at double time or subsequent minimum half hour payments. If work is not performed within the first half hour work may be discontinued or alternatively if employees are required to remain, the meal break may be taken after the first half hour and a minimum payment of 2 hours at overtime rates will be paid, calculated from normal ceasing time.

6.4.4 Time off duty after overtime

(a) An employee who works so much overtime between the termination of that employee's ordinary work on one day and the commencement of the employee's ordinary work on the next day that the employee has not at least 10 consecutive hours off duty between those times shall, subject to clause 6.4.4(b), be released after completion of such overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(b) If on the instructions of the employer such an employee resumes or continues work without having had such 10 consecutive hours off duty, the employee shall be paid double rates until released from duty for such period. The employee shall then be entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence:

6.5 Shift work

6.5.1 Afternoon and night shift allowances

(a) In addition to the rates of pay prescribed by 5.2 (Wages and extra payments) of this Award, employees whilst engaged on afternoon shift and night shift shall be paid an additional penalty rate for each such shift as follows:

| | |
|-----------------|--|
| Afternoon shift | 12.5% (or \$9.70 whichever is the greater) |
| Night shift | 15% (or \$9.70 whichever is the greater) |

(b) For the purposes of clause 6.5:

'Afternoon shift' means:

(i) any shift finishing after the ordinary working hours for day workers as Mutually Agreed upon or after 6.00 p.m. whichever is earlier; or

(ii) any shift finishing at midnight or between the time prescribed by clause 6.5.1(b)(i) and midnight;

'Night shift' means any shift finishing after midnight and at or before the starting time for day workers as Mutually Agreed upon or 6.00 a.m., whichever is earlier;

(c) The percentage which is quoted shall be the amount which is payable for each shift in addition to the employee's ordinary time wage rate.

(d) No employee shall as a result of clause 6.5 suffer any reduction to their current entitlement to shift allowance.

PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS

7.1 Annual leave

- 7.1.1 Every employee (other than a casual employee) shall at the end of each year of their employment be entitled to annual leave on full pay of 4 weeks.
- 7.1.2 Such annual leave shall be exclusive of any public holiday which may occur during the period of that annual leave and shall be paid for by the employer in advance at the ordinary rate payable to the employee concerned immediately prior to that leave, together with a 20% loading.
- 7.1.3 If the employment of an employee is terminated at the expiration of a full year of employment the employee shall be paid, in addition to any other amounts due, the employee's ordinary pay for a period of 4 weeks and also the employee's ordinary pay for any public holiday occurring during such period of 4 weeks.
- 7.1.4 Where the employment of an employee is terminated at the end of a period of employment of less than a full year the employer shall forthwith pay to the employee an amount equal to 1/12th of the employee's ordinary pay earned for that period of employment.
- 7.1.5 At least one month's notice of the commencement of annual leave shall be given to the employee:
- Provided that the employer may specify up to 6 weeks in any calendar year as peak periods when leave shall not be taken.
- 7.1.6 Except as hereinbefore provided it shall not be lawful for any employer to give or for any employee to accept payment in lieu of annual leave.
- 7.1.7 Illness during annual leave, when such illness exceeds one week and is covered by a medical certificate shall be regarded as sick leave and an equivalent number of days shall be added to the employee's annual leave:
- Provided that the annual leave taken at the time concerned shall not be extended.

7.2 Sick leave

7.2.1 Entitlement

- (a) Every employee, except casuals, and school-based apprentices and trainees, is entitled to 10 days' sick leave for each completed year of their employment with their employer.
- (b) This entitlement will accrue at the rate of one day's sick leave after each 5 weeks of employment to a maximum of 10 days per year.
- (c) Payment for sick leave will be made based on the ordinary number of hours that would have been worked if the employee were not absent on sick leave.
- (d) Sick leave may be taken for part of a day.
- (e) Sick leave shall be cumulative, but unless the employer and employee otherwise agree, no employee shall be entitled to receive, and no employer shall be bound to make, payment for more than 13 weeks' absence from work through illness in any one year.
- (f) Part-time employees accrue sick leave on a proportional basis.

7.2.2 Employee must give notice.

The payment of sick leave is subject to the employee promptly advising the employer of the employee's absence and its expected duration.

7.2.3 Evidence supporting a claim

When the employee's absence is for more than 2 days the employee is required to give the employer a doctor's certificate, or other reasonably acceptable evidence to the employer's satisfaction, about the nature and approximate duration of the illness.

7.2.4 Accumulated sick leave

An employee's accumulated sick leave entitlements are preserved when:

- (a) The employee is absent from work on unpaid leave granted by the employer;

- (b) The employer or employee terminates the employee's employment and the employee is re-employed within 3 months; or
- (c) The employee's employment is terminated because of illness or injury and the employee is re-employed by the same employer without having been employed in the interim.

The employee accumulates sick leave entitlements whilst absent from work on paid leave granted by the employer.

7.2.5 Every employee shall, at the end of each 2 years' employment be paid in full at their then ordinary rate of wages in respect of any untaken sick leave then standing to their credit.

7.2.6 Upon request by any employee the employer will deposit such untaken sick leave payment to the credit of a savings bank account to be nominated by the employee, and shall produce to the employee evidence that such deposit has been made.

7.2.7 Where at the time of making this Award an employee was already in receipt of an entitlement in accordance with that presently prescribed, clause 7.2 shall not operate so as to alter the date upon which any payment of accrued sick leave benefits under their existing entitlement would otherwise be made.

7.2.8 Where at the time of making this Award an employee had an accumulation of sick leave under the terms and conditions of an existing Award or Industrial Agreement applicable in the callings of cold storage and/or Ice Making and such sick leave was not subject to any consideration as prescribed in clause 7.2.5, the employee shall retain such accumulated sick leave and the availability shall be continued in accordance with the provisions of clauses 7.2.2 and 7.2.3 but provided that in those circumstances where the employee avails themselves of sick leave after the coming into force of this Award such leave shall firstly be debited against any credits accumulated after that date.

7.2.9 *Workers' compensation*

Where an employee is in receipt of workers' compensation, the employee is not entitled to payment of sick leave.

7.3 Absenteeism control measures

7.3.1 Sick leave is unlike annual or long service leave in that it is conditional upon an employee being ill or injured to the point of being unfit for duty.

It is an insurance to protect the employee and their family against hardship should they be unable to continue in their normal occupation and shall be only so utilised.

7.3.2 This procedure is designed to curtail sick leave abuse by employees who are absent from work and who are not genuinely unfit for duty and is to operate notwithstanding the provisions of clause 7.2 (Sick leave).

7.3.3 At the end of each 3 monthly period or as sick leave absenteeism for any employee warrants, by mutual agreement with the representative of the Union, the employer shall review the sick leave records with a view to establishing a list of employees whose record of attendance gives cause of reasonable concern.

7.3.4 Any employee with an unsatisfactory record shall be interviewed by the employer in the presence of the district secretary of the Union or their nominee if the employee so requests. If the discussion in respect to the absences does not provide satisfactory reason for the absences, then a letter of warning is to be sent to the employee and a copy to the nearest district secretary of the Union.

7.3.5 If no improvement is observed in the next period, the employee is to be again interviewed (as in clause 7.3.4), and if the interview results in unsatisfactory reasons being given, then a second letter of warning sent to the employee and a copy to the nearest district secretary of the Union also indicating proof of illness or a certificate may be required for any absence.

7.3.6 If the above action still results in unsatisfactory attendance at work then a final warning is to be given and if this is disregarded then good grounds will have been established for termination of employment.

7.3.7 The above procedure does not operate to withdraw the employer's right to take termination action or other disciplinary action against any employee if that employee has been found guilty of filling out a false sick leave application form and claiming sick leave pay when that person was not genuinely on sick leave. That is a matter relating to fraudulent misrepresentation which may justify instant dismissal.

7.4 Bereavement leave

7.4.1 *Full-time and part-time employees*

Full-time and part-time employees shall, on the death of a member of their immediate family or household in Australia, be entitled to paid bereavement leave up to and including the day of the funeral of such person. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in 2 ordinary days of work. Proof of such death is to be furnished by the employee to the satisfaction of the employer.

7.4.2 Long-term casual employees

- (a) A long-term casual employee is entitled to at least 2 days unpaid bereavement leave on the death of a member of the person's immediate family or household in Australia.
- (b) A "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access an entitlement under clause 7.4.2.

7.4.3 "Immediate family" includes:

- (a) A spouse (including a former spouse, a *de facto* spouse and a former *de facto* spouse, spouse of the same sex) of the employee; and
- (b) A child or an adult child (including an adopted child, a foster child, an ex-foster child, a stepchild or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

7.4.4 Unpaid leave

An employee with the consent of the employer, may apply for unpaid leave when a member of the employee's immediate family or household in Australia dies and the period of bereavement leave entitlement provided above is insufficient.

7.5 Long service leave

All employees covered by this Award are entitled to long service leave on full pay under, subject to, and in accordance with, the provisions of Chapter 2, Part 3, sections 42-58 of the Act as amended from time to time.

7.6 Family leave

The provisions of the Family Leave Award apply to and are deemed to form part of this Award.

7.6.1 It is to be noted that:

- (a) part-time work can be performed by agreement in the circumstances specified in the Family Leave Award;
- (b) a copy of the Family Leave Award is required to be displayed in accordance with section 697 of the Act.

7.6.2 The Family Leave Award also provides for the terms and conditions of leave associated with:

- (a) Maternity leave
- (b) Parental leave
- (c) Adoption leave
- (d) Special responsibility leave for the care and support of the employee's immediate family or household.

7.7 Public holidays

7.7.1 Subject to clause 7.7.6 all work done by any employee on:

- the 1st January;
- the 26th January;
- Good Friday;
- Easter Saturday (the day after Good Friday);
- Easter Monday;
- the 25th April (Anzac Day);
- The Birthday of the Sovereign;
- Christmas Day;
- Boxing Day; or
- any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday

will be paid for at the rate of double time and a-half with a minimum of 4 hours.

7.7.2 *Labour Day*

All employees covered by this Award are entitled to be paid a full day's wage for Labour Day (the first Monday in May or other day appointed under the *Holidays Act 1983*, to be kept in place of that holiday) irrespective of the fact that no work may be performed on such day, and if any employee concerned actually works on Labour Day, such employee will be paid a full day's wage for that day and in addition a payment for the time actually worked by the employee at one and a-half times the ordinary time rate of pay prescribed for such work with a minimum of 4 hours.

7.7.3 *Annual show*

All work done by employees in a district specified from time to time by the Minister by notification published in the *Industrial Gazette* on the day appointed under the *Holidays Act 1983*, to be kept as a holiday in relation to the annual agricultural, horticultural or industrial show held at the principal city or town, as specified in such notification of such district will be paid for at the rate of double time and a-half with a minimum of 4 hours.

In a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, the employee and employer must agree on an ordinary working day that is to be treated as a show holiday for all purposes.

7.7.4 *Double time and a-half*

For the purposes of clause 7.7 "double time and a-half" means one and a-half day's wages in addition to the employee's ordinary time rate of pay or *pro rata* if there is more or less than a day.

7.7.5 *Stand down*

Any employee, with 2 weeks or more of continuous service, whose employment has been terminated by the employer or who has been stood down by the employer during the month of December, and who is re-employed in January of the following year, shall be entitled to payment at the ordinary rate payable to that employee when they were dismissed or stood down, for any one or more of the following holidays, namely, Christmas Day, Boxing Day and the 1st January (New Year's Day).

7.7.6 *Substitution*

Where there is agreement between the employer and the majority of employees concerned, a public holiday may be substituted for another day. If such other day is worked, then payment for that day will be at the rate of double time and a-half at the employees' ordinary time rate of pay.

7.8 **Jury service**

- (a) An employee, other than a casual employee, required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the ordinary pay the employee would have been paid if the employee was not absent on jury service.
- (b) Alternatively, by agreement, fees (other than meal allowance) received by the employee to attend jury service will be paid to the employer and the employer will continue to pay the employee their ordinary pay for the time the employee was absent on jury service.
- (c) Employees shall notify their employer as soon as practicable of the date upon which they are required to attend for jury service and shall provide their employer with proof of such attendance, the duration of such attendance and the amount received in respect thereof.
- (d) If the employee is not required to serve on a jury for a day or part of a day after attending for jury service and the employee would ordinarily be working for all or part of the remaining day, the employee must, if practicable, present for work at the earliest reasonable opportunity.
- (e) "Ordinary pay" means the rate of pay that an employee would normally expect to receive for working ordinary hours on an ordinary day of the week, including any over-award payment. "Ordinary pay" excludes overtime, penalty rates of all types - including those attaching to working ordinary hours (for example) on a Saturday, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and other ancillary payments of a like nature.

PART 8 - TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK

8.1 Conveyance

8.1.1 The employer shall provide conveyance to transport employees to the railway station or bus stop most convenient to their places of residence when such employees cease work after their usual form of public transport is not available:

Provided however that nothing contained in clause 8.1.1 shall be deemed to abrogate or alter any existing arrangements between the employer and employees for the supply of transport after public transport has ceased for that day.

PART 9 - TRAINING AND RELATED MATTERS

9.1 Training consultation

9.1.1 Following proper consultation, an employer shall develop a training policy and program consistent with:

- (a) the current and future skill needs of the enterprise;
- (b) the size, structure and nature of the operations of the enterprise;
- (c) the need to develop vocational skills relevant to the enterprise and the Cold Storage industry through course conducted by appropriate educational institutions and training providers.

9.1.2 Where, as a result of consultation, it is agreed by the employer that additional training in accordance with the program developed pursuant to clause 9.1.1 should be undertaken by an employee, that training may be undertaken either on or off the job:

Provided that if the training is undertaken during ordinary working hours the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.

9.1.3 Any costs associated with standard fees for prescribed courses and textbooks (excluding those textbooks which are available in the employer's technical library) incurred in connection with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure:

Provided that reimbursement shall be on an annual basis, subject to the presentation of reports of satisfactory progress.

9.1.4 Travel costs incurred by an employee undertaking training in accordance with clause 9.1 which exceed those normally incurred in travelling to and from work shall be reimbursed by the employer.

9.1.5 Clauses 9.1.1, 9.1.2, 9.1.3 and 9.1.4 shall operate as interim provisions and shall be reviewed after 12 months operation.

9.1.6 Any disputes arising in relation to this clause shall be subject to the provisions of clause 3.2 (Grievance and dispute settling procedure).

PART 10 - OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES

10.1 Protective clothing

10.1.1 Freezers

Freezer suits and boots shall be supplied by the employer for employees working in freezers.

10.1.2 Chillers

General storage hands shall on application be supplied by the employer with waterproof aprons, which shall remain the property of the employer and which shall be laundered by the employer at the employer's expense.

10.1.3 Gloves

Gloves shall be supplied by the employer to employees in cold rooms on the following basis:

- (a) Gloves will be issued on the basis that they must be signed for.
- (b) All weekly hands shall be given a personal issue of gloves.

- (c) All regular casuals shall be issued with gloves on a day-to-day basis when they are required to work in the blast Freezer or on the bagging of beef inside the freezing chamber, and for general work being performed inside the freezing chambers.

Gloves will be replaced on a "wear and tear" basis provided that the old gloves are returned on the occasion of a new set being required.

10.2 Lockers

The employer shall provide lockers, showers and dressing rooms for employees and maintain them in a satisfactory condition with the co-operation of the employees.

10.3 Hot water

The employer shall provide equipment and facilities for the supply of boiling water at smokos and meal times.

PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS

Preamble

Clauses 11.1 and 11.2 replicate legislative provisions contained within the Act. In order to ensure the currency of existing legal requirements parties are advised to refer to sections 366, 372 and 373 of the Act as amended from time to time.

11.1 Right of entry

11.1.1 Authorised industrial officer

- (a) An "Authorised industrial officer" is any Union official holding a current authority issued by the Industrial Registrar.
- (b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the Union.

11.1.2 Entry procedure

- (a) The authorised industrial officer is entitled to enter the workplace during normal business hours as long as:
 - (i) the authorised industrial officer alerts the employer or other person in charge of the workplace to their presence; and
 - (ii) shows their authorisation upon request.
- (b) Clause 11.1.2(a)(i) does not apply if the authorised industrial officer establishes that the employer or other person in charge is absent.
- (c) A person must not obstruct or hinder any authorised industrial officer exercising their right of entry.
- (d) If the authorised industrial officer intentionally disregards a condition of clause 11.1.2 the authorised industrial officer may be treated as a trespasser.

11.1.3 Inspection of records

- (a) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under section 366 of the Act.
- (b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current employee except if the employee:
 - (i) is ineligible to become a member of the Union; or
 - (ii) is a party to a QWA or ancillary document, unless the employee has given written consent for the records to be inspected; or
 - (iii) has made a written request to the employer that they do not want their record inspected.
- (c) The authorised industrial officer may make a copy of the record, but cannot require any help from the employer.

- (d) A person must not coerce an employee or prospective employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

11.1.4 *Discussions with employees*

An authorised industrial officer is entitled to discuss with the employer, or a member or employee eligible to become a member of the Union:

- (a) matters under the Act during working or non-working time; and
- (b) any other matter with a member or employee eligible to become a member of the Union, during non-working time.

11.1.5 *Conduct*

An authorised industrial officer must not unreasonably interfere with the performance of work in exercising a right of entry.

11.2 Time and wages record

11.2.1 An employer must keep, at the place of work in Queensland, a time and wages record that contains the following particulars for each pay period for each employee, including apprentices and trainees:

- (a) the employee's award classification;
- (b) the employer's full name;
- (c) the name of the award under which the employee is working;
- (d) the number of hours worked by the employee during each day and week, the times at which the employee started and stopped work, and details of work breaks including meal breaks;
- (e) a weekly, daily or hourly wage rate - details of the wage rate for each week, day, or hour at which the employee is paid;
- (f) the gross and net wages paid to the employee;
- (g) details of any deductions made from the wages; and
- (h) contributions made by the employer to a superannuation fund.

11.2.2 The time and wages record must also contain:

- (a) the employee's full name and address;
- (b) the employee's date of birth;
- (c) details of sick leave credited or approved, and sick leave payments to the employee;
- (d) the date when the employee became an employee of the employer;
- (e) if appropriate, the date when the employee ceased employment with the employer; and
- (f) if a casual employee's entitlement to long service leave is worked out under section 47 of the Act - the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

11.2.3 The employer must keep the record for 6 years.

11.2.4 Such records shall be open to inspection during the employer's business hours by an inspector of the Department of Industrial Relations, in accordance with section 371 of the Act or an authorised industrial officer in accordance with sections 372 and 373 of the Act.

Schedule 1

List of employers with Second Tier Orders which to varying degrees modify the Provisions of this Award

| Employer | Case No. | Date of Order |
|------------------------------------|----------|---------------|
| John Pinnell Cold Stores Pty. Ltd. | B244/88 | 20.4.88 |
| Watson & Son Pty. Ltd. | B209/90 | 4.8.90 |

Schedule 2

SECOND \$8 ARBITRATED SAFETY NET ADJUSTMENT AT ENTERPRISE LEVEL

In addition to the wages payable under clause 5.2 (Wages and extra payments) of this Award, the second \$8 arbitrated safety net adjustment has been granted at the enterprise level in respect of the enterprises listed hereunder, and should, in the case of these enterprises, be added to such rates in clause 5.2.

The second \$8 per week arbitrated safety net adjustment may be offset to the extent of any other wage increase, whether award increase, an overaward payment or an increase by way of enterprise arrangement received since 1 February 1992.

| Name of Enterprise | Date of Increase | Date of Order |
|----------------------|------------------|---------------|
| Frigmobile Pty. Ltd. | 17 March 1995 | 31 March 1995 |

Schedule 3

Schedule 3 shall apply to all employees of Swire Cold Storage Pty Ltd at operations at Murrarie and Hemmant terminals.

1.1 Shift Allowance

Where such employees are required to work ordinary hours between 4.00 p.m. and 12 midnight Monday to Friday inclusive, such work shall be paid for at a rate of 20% in advance of the ordinary weekly rate as prescribed in this Award.

Clause 1.1 has been inserted as a result of an application to make Schedule 3 arising from the decision of the Full Bench of the Commission on 30 June 2004 (and published at (2004) 176 QGIG 494) to move to declare Industrial Agreements obsolete. Given the origin of clause 1.1 the provisions contained within it are not to be used as a precedent for any other matter whatsoever.

Dated 18 December 2002.

By the Commission,
[L.S.] E. EWALD,
Industrial Registrar,

Operative Date: 17 February 2003.